

Readopt with amendment Rab 202, effective 11/1/07 (document #9017), to read as follows:

PART Rab 202 DEFINITIONS

Rab 202.01 “Adjudicative proceeding” means “adjudicative proceeding” as defined in RSA 541A:1, I, namely, “the procedure to be followed in contested cases, as set forth in RSA 541A:31 through RSA 541A:36.”

~~Rab 202.02 “Complaint” means a written and signed statement delivered or mailed to the offices of the board which complies with Rab 205.03.~~

~~Rab 202.03 “Complainant” means a person who files a complaint pursuant to RSA 310-B:17-b and Rab 202.03.~~

Rab 202.024 “Contested case” means “contested case” as defined in RSA 541-A:1, IV, namely, “a proceeding in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after notice and opportunity for hearing.”

Rab 202.035 “Docket marking” means a number given to an adjudicative proceeding pursuant to Rab 208.03.

Rab 202.046 “**Complaint**” ~~“Grievance”~~ means an allegation in writing and submitted to the board that an appraiser has committed misconduct.

Rab 202.057 “**Complaint**” ~~“Grievance”~~ “officer” means the board member to whom the board has delegated, pursuant to Rab 102.02(e), the authority and responsibility to investigate, or assign an investigator, and attempt to resolve each **complaint grievance** alleging professional misconduct by an apprentice or appraiser.

Rab 202.068 “**Complainant**” ~~“Grievant”~~ means the person who submits a **complaint grievance** alleging professional misconduct by an apprentice or appraiser.

Rab 202.079 “Hearing” means the receipt and consideration by the board of evidence, argument, or both, by methods appropriate to the circumstances, to render decisions in adjudicative proceedings and includes:

- (a) Conducting trial-type evidentiary hearings;
- (b) Directing the filing of exhibits, affidavits, memoranda, or briefs;
- (c) Directing the delivery of oral argument; and
- (d) Any combination of these and similar processes or actions.

Rab 202.840 “Investigation” means a formal or informal search by the board for data concerning matters within its jurisdiction.

Rab 202.~~914~~ “Investigator” means the board member, committee of board members, or other individual or committee of individuals qualified by reason of education or experience, to investigate a ***complaint*** ~~grievance~~.

Rab 202.~~1042~~ “Motion” means any request by a party to a proceeding for an order relating to that proceeding.

Rab 202.~~1143~~ “Notice” means a notification to all parties as to a pending action or result thereof, including time and date notification.

Rab 202.~~1244~~ “Order” means a document issued by the board requiring a person to do or to abstain from doing something, or determining a person’s rights to a license, certification or to some other property or privilege.

Rab 202.~~1345~~ “Party” means each person named or admitted as a party or properly seeking and entitled as a right to be admitted as a party. The term includes, when used in the context of an adjudicative hearing, intervenors admitted pursuant to RSA 541-A:32.

Rab 202.~~1446~~ “Petition for declaratory ruling” means a request to the board for a ruling as to the specific applicability and clarification of any statutory provision enforced or administered by, or of any rule or order of, the board.

Rab 202.~~1547~~ “Petition for rulemaking” means a request to the board to adopt, amend or repeal a rule.

Rab 202.~~1648~~ “Petitioner” means a person who makes an application, complaint, request or other communication to the board other than a motion, seeking an order, license, action, or any other relief.

Rab 202.~~1749~~ “Rulemaking” means the process set forth in RSA 541-A for the adoption of rules.

Readopt with amendment Rab 205, effective 11/1/07 (document #9051), and renumber as Rab 203, to read as follows:

PART Rab 203~~5~~ ~~GRIEVANCES AND COMPLAINTS ALLEGING PROFESSIONAL MISCONDUCT~~

Rab 203~~5~~.01 ***Complaints*** ~~Grievances~~.

(a) All allegations of professional misconduct, negligence or questionable appraisals shall be submitted in writing and shall be known as ***complaints*** ~~grievances~~. All ***complaints*** ~~grievances~~ that comply with (b) below shall be investigated by the board pursuant to Rab 203~~5~~.02.

(b) Persons filing ***complaints*** ~~grievances~~ shall provide the following:

(1) The specific grounds for any alleged misconduct;

- (2) Detailed facts constituting the allegation;
- (3) The specific appraisal in question;
- (4) A description of any supporting information;
- (5) The name, address and telephone number of individual appraiser performing the work in question on the ***complaint grievance***;
- (6) The certificate or license number of the appraiser against whom the ***complaint grievance*** is brought;
- (7) All copies of any supporting documentation;
- (8) A statement whether any court action has been initiated involving the appraisal or conduct at issue;
- (9) The name, address and telephone of the complainant; and
- (10) The date and signature of the complainant.

(c) ~~Grievances~~ ***Complaints*** shall be submitted to the board at least 10 working days prior to a regularly scheduled meeting in order to appear on the agenda for that meeting.

Rab 2035.02 Investigation of ***Complaints*** ~~Grievances~~.

(a) Notwithstanding any other provisions, the board shall, within the limits of its authority, and acting through its ~~grievance~~ ***complaint*** officer or through other investigators pursuant to Rab 102.02(f), in the course of an investigation, make inquiry of any person, gather data, and prepare informative reports for use by the board to assist the board to fairly evaluate a ***complaint grievance***.

(b) Upon receiving any written ***complaint grievance*** that complies with Rab 2035.01, the following procedure shall be followed:

- (1) The ~~grievance~~ ***complaint*** officer shall review the ***complaint grievance*** prior to the next board meeting and recommend to the board whether the ***complaint grievance*** should be investigated further or dismissed;
- (2) At its next meeting the board shall vote to accept or reject the ~~grievance~~ ***complaint*** officer's recommendation made pursuant to (1) above;
- (3) The ~~grievance~~ ***complaint*** officer or other investigator shall discuss the ***complaint grievance*** with the ***complainant grievant***, the appraiser, and every other person necessary for a full and fair evaluation of the ***complaint grievance***;

(4) In instances where an appraisal report is included as part of the ***complaint grievance***, the ***grievance complaint*** officer or other investigator shall evaluate the appraisal report for conformity with Uniform Standards of Professional Appraisal Practice (USPAP) as a part of the investigation;

~~(5) The grievance officer shall give an investigation progress report at each following board meeting until the grievance officer gives a final report that recommends a disposition of the grievance;~~

(56) The ***grievance complaint*** officer shall ensure that the investigation is completed within ~~90~~ 180 days from referral by the board;

(67) When the investigation has been completed, and not before then, the ***grievance complaint*** officer shall attempt to resolve the ***complaint grievance*** on an informal basis;

(78) After informal resolution of the ***grievance complaint*** pursuant to (67) above has been attempted, and regardless of whether such attempt was successful, the ***complaint grievance*** officer shall ~~provide~~ give a final report ***of investigation*** on the ***complaint grievance investigation*** including a recommendation for the disposition of the ***complaint grievance***; and

(89) After considering the ***grievance complaint*** officer's final report ***of investigation***, the board shall:

- a. Dismiss the ***complaint grievance*** if the information gathered in the investigation does not suggest that the apprentice or appraiser committed misconduct;
- b. Accept the informal resolution of the ***complaint grievance*** if such resolution was agreed to by the appraiser and the board agrees that the terms of the resolution address the basis or bases for the ***complaint grievance*** in such a way as to protect the public from and prevent subsequent misconduct by the appraiser;
- c. Commence an adjudicative hearing if the evidence suggests that the apprentice or appraiser engaged in misconduct and an informal resolution was not accepted by the appraiser or the board; or
- d. Investigate the ***complaint grievance*** further if the information gathered in the investigation is not sufficient to decide to dismiss the ***complaint grievance*** pursuant to 8.a. above or to commence an adjudicative hearing pursuant to 8.c. above;

(940) The ***grievance complaint*** officer shall not vote on the disposition of the ***complaint grievance*** or render a decision on the matter if it goes to hearing.

(c) If the board votes to commence an adjudicative hearing, the board shall direct the ~~grievance~~ **complaint** officer to explore resolution of the **complaint** ~~grievance~~ through a proposed settlement with the appraiser. If the ~~grievance~~ **complaint** officer and the appraiser reach a proposed settlement, the ~~grievance~~ **complaint** officer shall submit it to the board for its review.

(d) If a proposed settlement agreement is reached pursuant to (c) above and the board concludes that its terms address the basis or bases for the **complaint** ~~grievance~~ in such a way as to protect the public from and prevent subsequent misconduct by the appraiser, it shall preliminarily approve it. ~~Upon such preliminary approval, the board shall provide to the grievant a notice that includes a description of the terms of the proposed settlement and a statement that the preliminary approval shall become final and shall resolve the case unless grievant does not agree with the decision of the board and files a written objection to the settlement within 10 days of the date of the notice. The written objection shall be in the form of a complaint that complies with Rab 205.03(a) and (b).~~

Rab 205.03 Complaints.

~~(a) Any grievant who does not agree with the decision of the board pursuant to Rab 205.02(d) may, pursuant to RSA 310-B:17 b and within 10 days of the date of the notice, file a complaint with the board. No complaint shall be accepted unless submitted in writing, using the form described in (b) below supplied by the board.~~

~~(b) The complainant shall provide the following on the complaint:~~

- ~~(1) The specific grounds for any alleged misconduct;~~
- ~~(2) Detailed facts constituting the allegation;~~
- ~~(3) The specific appraisal in question;~~
- ~~(4) A description of any supporting information;~~
- ~~(5) The name, address and telephone number of individual appraiser performing the work in question on the complaint is brought;~~
- ~~(6) The certificate or license number of the appraiser against whom the complaint is brought;~~
- ~~(7) Include all copies of any supporting documentation;~~
- ~~(8) If any court action related to the matter in issue has already been initiated;~~
- ~~(9) The name, address and telephone number of the complainant; and~~
- ~~(10) The date and signature of the complainant.~~

~~(c) Upon receipt of a complaint that complies with (b) above, the board shall issue a notice of hearing commencing an adjudicative proceeding on the specific allegations set forth in the complaint.~~

Readopt with amendments Rab 203 and Rab 205, effective 11/1/07 (document #9018), and Rab 204 and Rab 206-209, effective 11/1/07 (document #9017), and renumber as Rab 204-Rab 214, to read as follows:

~~PART Rab 203 COMPLIANCE WITH AND WAIVER OF RULES~~

~~Rab 203.01 Failure to Comply with Rules. Failure to comply with these rules shall result in:~~

- ~~(a) A refusal to accept a non-complaint document for filing;~~
- ~~(b) The denial of a non-complaint application, petition or motion;~~
- ~~(c) The issuance of an order adverse to any complaint person; or~~
- ~~(d) Such other action as is reasonably likely to bring about compliance.~~

~~Rab 203.02 Waiver of Rules.~~

~~(a) The board, on its own initiative or upon motion by one of its members or other interested person, shall waive the application of a board rule if it determines that:~~

- ~~(1) Reasonable notice is given to all affected persons;~~
- ~~(2) The waiver appears to be lawful; and~~
- ~~(3) Granting the waiver would not impact fairness and would promote greater accuracy and the efficient resolution of issues pending before the board than would adherence to the particular rule.~~

~~(b) All waivers shall:~~

- ~~(1) Be requested in writing unless such request for waiver is made by a board member;~~
- ~~(2) Be temporary;~~
- ~~(3) Specify an expiration date or event which triggers expiration;~~
- ~~(4) Be applied only to the proceeding under review; and~~
- ~~(5) Be acted upon by the board using the criteria stated in (a)(1) — (3) above, within 45 days of receipt of such request.~~

~~PART Rab 204 PRACTICE AND STAFF APPEARANCE BEFORE THE BOARD~~

~~Rab 204.01 Practice Before the Board.~~ Any person, on written notification to the board and parties, may appear before the board on his/her own behalf, by attorney authorized to practice in this State, or by authorized agent. Nothing in this rule shall be interpreted in such a way as to restrict or limit the right of any person to conduct his or her own business with or before the board.

~~Rab 204.02 Board Staff.~~ Except as otherwise specifically provided in this title, the staff of the board shall not appear in rulemaking or adjudicative proceedings. The staff shall provide technical assistance to the board to assure that the board receives data adequate to render a sound decision. Technical assistance shall include the gathering of information for creation of an evidentiary file to assist the board in reaching decisions. Information gathered by staff shall be either admitted into the record as evidence through testimony, submission of documents or through notice by the board pursuant to RSA 541-A:33.

~~PART Rab 206 SCHEDULING OF HEARINGS~~

~~Rab 206.01 Place of Hearings.~~ All hearings before the board shall be held at the offices of the board in Concord, New Hampshire. Hearings shall be held elsewhere by order of the board if required by law or if the board finds that the convenience to the public and the parties to hold hearings in another location substantially outweighs the burden of holding such hearings at its offices.

~~Rab 206.02 Calendar of Hearings.~~ The board shall maintain a docket of all proceedings pending before the board. The board shall maintain a hearing calendar of all proceedings that are to receive a hearing.

~~Rab 206.03 Computation of Time.~~ Any time period specified in this chapter shall begin with the day following the act, event, or default, and shall include the last day of the period, unless it is a Saturday, Sunday, or state legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or state legal holiday. When the period prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded from the computation.

~~Rab 206.04 Change in Allowed Times.~~

~~(a) Except where the time is fixed by statute, the board shall entertain motions to lengthen or shorten the time provided for the filing of any document, or advance or postpone the time set for any oral hearing. A motion for a change of time shall be granted upon a finding of diligence and probable injury to the moving party which outweighs any detriment likely to be suffered by any other party to the proceeding. The board shall, on its own motion, lengthen or shorten a time period if such change would not prejudice any party and would make the proceedings more efficient.~~

~~(b) A motion to change time shall not be filed within 7 business days of the deadline in question.~~

~~Rab 206.05 Continuances.~~

~~(a) A motion for the continuance of a hearing shall be made in writing and, absent exigent circumstances, filed with the board at least 5 working days prior to the hearing. A copy of the motion shall be served on all other parties no later than when the motion is filed with the board.~~

~~(b) Exigent circumstances shall include:~~

~~(1) Serious illness;~~

~~(2) Hospitalization;~~

~~(3) Incarceration;~~

~~(4) Death of a family member; or~~

~~(5) Any other unforeseeable circumstance beyond the party's control that requires the party's absence from the scheduled hearing.~~

~~(c) Appearance by a representative of a party shall not be accepted as a substitute for a party's required presence at a hearing.~~

~~(d) The written request or motion shall contain:~~

~~(1) The specific reason(s) why the party cannot attend the hearing as scheduled, including documentation of such reason if documentation exists;~~

~~(2) Proposed dates and times when all interested parties shall be available;~~

~~(3) The docket number of the hearing; and~~

~~(4) The name and contact information of the requestor.~~

~~(e) If proposed dates and times are not provided as required by (d)(2), the motion shall be denied. Otherwise, the motion shall be granted and the hearing continued to one of the proposed dates and times set forth in the motion.~~

~~Rab 206.06 Consolidation. Whenever it appears to the board, upon motion or its own initiative, that 2 or more proceedings involve substantially similar or substantially related issues, the board shall consolidate those proceedings for hearing, or decision, or both.~~

~~Rab 206.07 Severance. Whenever it appears to the board, upon motion or its own initiative, that injury to the substantial rights of a party or undue delay will be thereby avoided,~~

~~the board shall sever one or more issues from a proceeding, and dispose of those issues in another proceeding.~~

~~PART Rab 207 FILING AND SERVICE OF DOCUMENTS~~

~~Rab 207.01 Filing of Documents with the Board. A document shall be considered filed with the board when it is actually received by the board in their offices, by a board member or staff who is hereby delegated the authority to receive and maintain the records of proceedings governed by this chapter, and conforms to the requirements of this chapter.~~

~~Rab 207.02 Form, Appearance, and Number of Documents.~~

~~(a) All documents to be filed under this chapter shall:~~

- ~~(1) Be on strong, durable, opaque, unglazed paper, of the size of 8 1/2" by 11", with a left hand margin of 1 1/2";~~
- ~~(2) Be reproduced by printing, or any other process providing a clear and legible copy, and printed or typed in clear type not smaller than 12 pt.;~~
- ~~(3) Be double spaced, with the exception of quotations, which shall be single spaced and indented;~~
- ~~(4) Unless printed, be impressed upon only one side of the paper;~~
- ~~(5) Contain the title and docket number of the proceeding;~~
- ~~(6) Be dated, with the original signed in ink; and~~
- ~~(7) State the title, if any, and address of the signer.~~

~~(b) Except as otherwise provided in this chapter, all documents filed with the board shall be filed with an original and 7 copies.~~

~~Rab 207.03 Subscription and Veracity of Documents. All petitions, motions, objections, and replies, filed with the board shall be signed by the party, or, if the party appears by a representative, by the representative. The signature on the document shall constitute certification by the signer that the signer has read the document, that the signer is authorized to file it, that, to the best of the knowledge, information, and belief of the signer, there is good ground to support it, and that it is not filed for delay. A willful violation of this section shall result in the entry of an order adverse to the party committing the violation.~~

~~Rab 207.04 Service of Documents.~~

~~(a) All petitions, motions, objections, replies, exhibits, memoranda, or other documents filed by any party to a proceeding governed by this chapter, shall be served by that party upon all other parties to the proceeding, or to a party's representative if the board has been notified of the~~

~~representation. All notices, orders, decisions or other documents issued by the board pursuant to this chapter, shall likewise be served by the board upon all other parties to the proceeding or their representatives if they are represented.~~

~~(b) The board shall serve documents upon parties, or representatives, on the date the board files the document in the record of the proceedings by:~~

~~(1) Depositing a copy of that document, first class postage prepaid, in the United States mails, addressed to the party or representative at the last address given to the board by the party or representative; or~~

~~(2) Delivering a copy of that document in hand to the party or representative.~~

~~(c) Parties shall serve other parties by:~~

~~(1) Depositing a copy of the document in the United States mails, first class postage prepaid, addressed to the party or representative at the last address given to the board by the party or representative prior to its filing with the board; or~~

~~(2) Delivering a copy of the document in hand to the party or representative prior to its filing with the board.~~

~~(d) When a party has appeared by a representative, service upon the representative shall constitute service upon the party. If a party appears by 2 or more representatives, service on any representative shall be sufficient.~~

~~(e) Every document filed with the board, and required to be served upon the parties to a proceeding, shall be accompanied by a certificate of service, signed by the person making service, attesting to the method and date of service, and the persons served.~~

~~Rab 207.05 Pleadings.~~

~~(a) The only pleading permitted shall be petitions and replies thereto.~~

~~(b) Unless otherwise required by statute, all petitions shall contain:~~

~~(1) The name and address of the petitioner;~~

~~(2) The name and address of the petitioner's representative, if any;~~

~~(3) A concise statement of all material facts which caused the petitioner to request the board to act;~~

~~(4) The action which the petitioner wishes the board to take;~~

~~(5) The identification of any statutes, rules, orders, or other authority which entitles the petitioner to have the board act as requested; and~~

~~(6) The name and address of the person, if any, against whom the petitioner complains, or against whom the petitioner wishes the board to take action.~~

~~(c) Unless otherwise required by statute or this title, all replies shall contain:~~

~~(1) The name and address of the respondent;~~

~~(2) The name and address of the representative of the respondent, if any;~~

~~(3) A statement admitting or denying each and every fact alleged in the petition, provided that if the respondent lacks sufficient information to either admit or deny a fact contained in the petition, the respondent shall so state, specifically identifying each such fact;~~

~~(4) A statement admitting or denying the authority identified in support of the action requested by the petitioner;~~

~~(5) A concise statement of each and every additional or different fact which causes the respondent to request the board not to act, or to act differently from that requested by the petitioner;~~

~~(6) The identification of any statutes, rules, orders, or other authority, not identified in the petition, relevant to the subject matter of the petition; and~~

~~(7) The action that the respondent wishes the board to take.~~

~~(d) Unless otherwise provided by statute or orders of the board, a reply shall be filed within 30 days after service of a petition.~~

~~(e) Any fact contained in the petition which is not denied in the reply, shall be deemed admitted by the respondent for the purpose of ruling on the petition.~~

~~(f) The petitioner shall be presumed to deny all allegations in the reply, and no response shall be permitted to the reply.~~

~~(g) All petitions shall be granted or denied on their merits.~~

~~Rab 207.06 Motions. Unless otherwise specifically provided in this chapter, all motions and objections thereto shall conform to the requirements of this section:~~

~~(a) Unless presented during an oral session of a proceeding, all motions and objections thereto shall be in writing.~~

~~(b) All motions shall state clearly and concisely:~~

~~(1) The purpose of the motion;~~

- ~~(2) The relief sought by the motion;~~
- ~~(3) The statutes, rules, orders, or other authority authorizing the relief sought by the motion; and~~
- ~~(4) The facts claimed to constitute the grounds requiring the relief requested by the motion.~~
- ~~(c) Objections to motions shall state clearly and concisely:~~
 - ~~(1) The defense of the party filing the objection;~~
 - ~~(2) The action which the party filing the objection wishes the board to take on the motion;~~
 - ~~(3) The statutes, rules, orders, or other authority relied upon in objecting to the motion; and~~
 - ~~(4) Any facts which are additional to or different from the facts stated in the motion.~~
- ~~(d) An objection to a motion shall specifically admit or deny each fact contained in the motion. Failure to deny a fact contained in a motion shall constitute the admission of that fact for the purposes of the motion. In the event a party filing an objection to a motion lacks sufficient information to either admit or deny a fact contained in the motion, the party shall so state, specifically identifying each such fact.~~
- ~~(e) All motions shall be decided upon the writings submitted unless otherwise requested by a party and upon a finding by the board that a hearing upon the motion is necessary to fully and fairly consider the matter. Repetitious motions shall not be submitted.~~
- ~~(f) Unless otherwise provided by statute, this chapter, or upon order of the board finding prejudice to a party if applied strictly, objections to motions shall be filed within 10 days after the filing of the motion. Failure to object to a motion within the time allowed shall constitute a waiver of objection to the motion but shall not require the board to grant the motion automatically.~~
- ~~(g) All motions shall be granted or denied on their merits.~~

~~PART Rab 208 ADJUDICATIVE PROCEEDINGS~~

~~Rab 208.01 Applicability. This part shall apply to all proceedings conducted by the board except rulemaking, non-adjudicative investigations, and petitions for declaratory rulings.~~

~~Rab 208.02 Commencement.~~

~~(a) The board shall commence an adjudicative proceeding by issuing an order of notice that:~~

- ~~(1) Identifies the parties, including intervenors if any, to the proceeding as of the date of the order.~~
- ~~(2) Briefly summarizes the subject matter of the proceeding, and identifies the issues to be resolved;~~
- ~~(3) Specifies the legal authority for the proposed action, and identifies any applicable New Hampshire statutes and rules and any applicable federal statutes and regulations;~~
- ~~(4) Specifies the type of proceeding to be conducted, and the method by which it will be conducted;~~
- ~~(5) Specifies the date by which, and the address where, appearances shall be filed;~~
- ~~(6) Indicates that each party has the right to be represented at their own expense;~~
- ~~(7) Specifies the date, time, and location of the first day of oral hearing, if any, which might be limited to procedural matters;~~
- ~~(8) Specifies the date and address for the submission of written material;~~
- ~~(9) Identifies the presiding officer for the proceeding, if other than the board; and~~
- ~~(10) Indicates that the apprentice or appraiser has the right to have the board provide a certified shorthand court reporter at the apprentice or appraiser's expense.~~

~~(b) The notice required pursuant to (a) above, along with a copy of the complaint that is the subject of the hearing, shall be served, pursuant to RSA 310-B:19, upon all parties either personally or by certified mail, return receipt requested.~~

~~Rab 208.03 Powers of Presiding Officer.~~

~~(a) The presiding officer shall have all authority with respect to directing the conduct of proceedings, including the power to administer oaths and affirmations and rule on procedural motions. Exceptions to rulings of the presiding officer shall not be required. The presiding officer shall, from time to time, serve upon all parties to the proceeding notices as to any session, conference, or other event occurring in the proceeding.~~

~~(b) The presiding officer, upon his or her own initiative or upon the motion of any party, shall suspend or waive any requirement or limitation imposed by this chapter upon reasonable notice to affected persons when the proposed waiver or suspension appears to be lawful, and would be more likely to promote the fair, accurate and efficient resolution of issues pending before the board than would adherence to a particular rule or procedure.~~

~~Rab 208.04 Withdrawal of Presiding Officer or Board Member.~~

~~(a) Upon his or her own initiative or upon the motion of any party, the presiding officer or board member shall, for good cause withdraw from any hearing.~~

~~(b) Good cause shall exist if the presiding officer or board member:~~

~~(1) Has a direct interest in the outcome of a proceeding, including, but not limited to, having a financial, professional, personal, or family relationship with any party to the proceeding;~~

~~(2) Has made statements or engaged in behavior which objectively demonstrates that he or she has prejudged the facts of a case; or~~

~~(3) Personally believes that he or she cannot fairly judge the facts of a case.~~

~~(c) Mere knowledge of the issues, the parties or any witness shall not constitute good cause for withdrawal.~~

~~Rab 208.05 Docketing, Service of Notice, Public Notice.~~

~~(a) The board shall assign the proceeding a docket number and serve the order of notice upon all parties to the proceeding, and the attorney general, at least 30 days before the first date of oral hearing or the first date that action is required in response to the order.~~

~~(b) All subsequent orders and notices in the proceeding shall also be served upon all parties and the attorney general.~~

~~(c) Orders, notices, memoranda, exhibits, and all other materials submitted in a docketed case shall be kept in a docket file and made available for public inspection in the main office of the board.~~

~~(d) The board shall, upon receipt of new pertinent information relevant to the proceeding, and without prior notice or hearing, amend the order of notice.~~

~~Rab 208.06 Intervention.~~

~~(a) Petitions for intervention may be filed at any time after commencement of a proceeding.~~

~~(b) Petitions for intervention shall state, with particularity:~~

~~(1) The petitioner's interest in the subject matter of the hearing;~~

~~(2) The petitioner's position with respect to the subject matter of the hearing;~~

~~(3) Why the interests of the parties and the orderly and prompt conduct of the proceeding would not be impaired; and~~

~~(4) Any other reasons why the petitioner should be permitted to intervene.~~

~~(c) Petitions for intervention shall be granted if the petitioner has a substantial interest in the proceeding and if granting intervention will not prejudice a party or unduly delay the proceeding. Petitions for intervention shall be granted subject to conditions or limitations based on the petitioner's limited interest in the proceeding or other limitations or conditions necessary to avoid prejudice or delay. Such conditions or limitations contained in orders granting intervention shall be modified by the board at any time consistent with ensuring the fair and orderly conduct of the proceeding.~~

~~(d) An intervenor shall be subject to the same time limitations which would have been applicable if he or she had been a party from the commencement of the proceeding. No phase or portion of the proceeding shall be repeated because of the fact of intervention.~~

~~Rab 208.07 Pre-Hearing and Other Informal Conferences.~~

~~(a) During any proceeding the presiding officer shall, upon motion, or upon his or her own initiative, request all interested parties to attend one or more informal conferences to aid in the disposition of the proceeding.~~

~~(b) In addition to any offers of settlement or counter offers of settlement, the parties shall be prepared to discuss the following at the pre-hearing conference:~~

~~(1) The simplification of the issues;~~

~~(2) The necessity or desirability of amendments to the pleading;~~

~~(3) The possibility of obtaining admissions of fact and of documents to avoid unnecessary proof;~~

~~(4) A limitation on the number of witnesses;~~

~~(5) Any changes to standard procedure desired during the proceeding;~~

~~(6) The distribution of written testimony, if any, and exhibits to the parties;~~

~~(7) The consolidation of the examination of witnesses by the parties; and~~

~~(8) Any other matters which might contribute to the prompt and orderly conduct of the proceeding without adversely affecting its fairness.~~

~~(c) The presiding officer shall cause such conferences to be tape recorded and such recordings shall be part of the record. Matters decided at an informal conference, including stipulations by the parties, shall be reflected in an appropriate and timely order.~~

~~Rab 208.08 Discovery and Disclosure.~~

~~(a) Parties shall attempt to agree among themselves concerning the mutual exchange of relevant information. Each party shall make a good faith attempt to provide complete and timely responses to informal requests for information relevant to the hearing.~~

~~(b) Unless otherwise agreed by the parties, no later than 15 days prior to an evidentiary hearing the parties shall exchange:~~

~~(1) A list of all witnesses to be called at hearing with a brief explanation of their expected testimony;~~

~~(2) A list of all exhibits to be presented at hearing; and~~

~~(3) A copy of each exhibit to be presented at the hearing.~~

~~(c) The board shall provide for disclosure of any investigative report or other unprivileged information in possession of the board that is reasonably related to the subject matter of the proceeding.~~

~~(d) Where a dispute arises between parties with respect to production of witnesses or documents relevant to the hearing, a party may file a motion for discovery in writing to the board requesting the board to order compliance with the discovery request.~~

~~(e) A motion filed under (d) above shall:~~

~~(1) Set forth in detail those factors which the moving party believes support the request for discovery; and~~

~~(2) List with as much specificity as practicable the information that the moving party seeks to discover.~~

~~(f) Requests for discovery shall be granted by the board when:~~

~~(1) The requested discovery will not cause material unfairness to any party;~~

~~(2) Lack of the requested discovery will place the requesting party at a material disadvantage;~~

~~(3) The requested method of discovery is the least burdensome method for obtaining the requested material;~~

~~(4) The requesting party has acted diligently to procure the information;~~

~~(5) The requested discovery will not unreasonably delay the proceeding; and~~

~~(6) The requested discovery is necessary for a full and fair presentation of the evidence at the hearing.~~

~~Rab 208.09 Subpoenas.~~

~~(a) Subpoenas for the attendance of witnesses or production of evidence shall, notwithstanding Rab 208.03(a), be issued only by the board upon approval of the attorney general, as required by RSA 310-B:23-a, II.~~

~~(b) A subpoena shall be issued on the initiative of the board or in response to written motion by a party.~~

~~(c) A party requesting a subpoena shall attach a copy of the proposed subpoena to the motion. The requesting party shall be responsible for service of the subpoena and payment of witness fees and mileage expenses, if any. If the subpoena issues upon the board's initiative, the board shall be responsible for any fees or mileage.~~

~~(d) Unless the board quashes or modifies the subpoena based upon a motion, the person to whom the subpoena is directed shall comply with the subpoena within the time prescribed within the subpoena.~~

~~(e) A subpoena shall be served by any person who is 18 years of age or older, and in the manner authorized for service of subpoenas in the New Hampshire superior court. The fact of service shall be written on the reverse of the original copy of the subpoena by the person making service and a copy shall be immediately returned to the board by the person making service.~~

~~(f) Should a person fail to comply with a subpoena issued pursuant to this section, the affected party may seek judicial enforcement of the subpoena.~~

~~(g) The board shall grant a request to authorize a subpoena upon approval of the attorney general, or to quash or modify a subpoena, if such is necessary for a full and fair presentation of the evidence and the criteria set forth in Rab 208.06 for evaluation of discovery requests generally.~~

~~Rab 208.10 Evidence.~~

~~(a) Proceedings shall not be conducted under the New Hampshire rules of evidence, and all data which will reasonably assist the board arrive at the truth shall be admissible. Nonetheless, the board shall, pursuant to RSA 541A:33, II, exclude irrelevant, immaterial or unduly repetitious evidence. Irrelevant evidence shall include, but not be limited to, evidence concerning matters not in issue at the hearing or persons not party to the proceedings. Except as otherwise provided by this title, the evidentiary privileges recognized by the courts of New Hampshire shall also apply to proceedings under this chapter.~~

~~(b) If the board takes official notice of a fact it shall so state and permit any party, upon timely request, the opportunity to show the contrary.~~

~~Rab 208.11 Burden and Standard of Proof.~~

~~(a) The party asserting the affirmative of a proposition shall have the burden of proving the truth of that proposition by a preponderance of the evidence.~~

~~(b) Without limiting (a), above, all moving parties and all petitioners shall have the burden of persuading the board that their motion or petition should be granted.~~

~~Rab 208.12 Methods of Proceeding.~~

~~(a) Where all parties to the proceedings agree to the proceeding to be so conducted and agree there are no disputes as to the material facts involved in the subject matter of the proceeding, the proceeding shall be limited to the submission of memoranda wherein are argued the conclusions the parties wish the board to draw from the facts, or memoranda and affidavits.~~

~~(b) Where facts material to the subject matter of the proceeding are in dispute, and the board determines that personal observation of the witnesses or the immediate opportunity for cross-examination of witnesses is necessary, the proceeding shall consist of a trial-type evidentiary hearing with the subsequent submission of memoranda.~~

~~Rab 208.13 Methods of Proceeding – Memoranda Only.~~

~~(a) When commencing a memoranda only proceeding, the board shall, in the order of notice, or as an attachment thereto, or in documents referred to therein, set forth the undisputed facts which are material to the subject matter of the proceeding.~~

~~(b) Unless otherwise ordered by the board, the parties shall file opening memoranda within 30 days from service of the order of notice and reply memoranda within 15 days from the filing of the opening memoranda.~~

~~(c) Upon expiration of the time for filing reply memoranda, the record shall be closed, and the board shall proceed to a decision on the subject matter of the proceeding. The board shall, however, upon receipt of any new pertinent information and upon notice to all parties, reopen the record at any time prior to decision upon notice to all parties.~~

~~Rab 208.14 Methods of Proceedings – Affidavits and Memoranda.~~

~~(a) When commencing a proceeding where all evidence and testimony are submitted in written form with memoranda, the board shall, in the order of notice, or as an attachment thereto, or in documents referred to therein, set forth the undisputed facts which are material to the subject matter of the proceeding, and shall generally describe the factual areas material to the subject matter of the proceeding which are in dispute.~~

~~(b) The complainant shall, within 30 days from service of the order of notice, file opening memoranda and all documents sufficient to establish its claim.~~

~~(c) Within 15 days from filing of the opening memoranda, the respondent shall file reply affidavits and documents.~~

~~(d) Within 7 days from the filing of the reply affidavits and documents, the complainant may file rebuttal documents.~~

~~(e) The board shall specify other times in the order of notice or in a subsequent order if needed to avoid prejudice or if requested and agreed to by the parties.~~

~~(f) Unless the information contained in an affidavit is within the personal knowledge of the affiant, the affiant shall relate the identity of the person from whom the affiant received the information, and the circumstances surrounding the acquisition of the information from the person. Failure to identify a source other than the affiant shall be deemed by the board to be a representation that the information is within the personal knowledge of the affiant.~~

~~(g) Upon expiration of the time for filing reply memoranda, the record shall be closed, and the board shall proceed to a decision on the subject matter of the proceeding. The board, however, upon receipt of any new pertinent information and upon notice to all parties, reopen the record at any time prior to decision.~~

~~Rab 208.15 Methods of Proceeding Trial type Evidentiary.~~

~~(a) Adjudicative proceedings not conducted in accordance with Rab 208.13 or Rab 208.14 pursuant to the agreement of the parties shall consist of trial type evidentiary sessions and memoranda.~~

~~(b) Testimonial, documentary, and physical evidence shall be offered in the presence of the presiding officer, unless other means of presentation, such as written affidavits in lieu of oral testimony, are agreed to by the parties. In instances where the credibility of a witness is relevant and is required to be determined by the board, only those board members who are present to observe such witnesses testify shall participate in rendering a decision in the matter.~~

~~(c) All witnesses giving oral testimony in a trial type evidentiary proceeding shall first be administered an oath or affirmation by the presiding officer.~~

~~(d) Exhibits shall be sequentially identified and numbered in a single series, without being designated as being for the petitioner or respondent. At the time the exhibit is marked for identification, the party offering an exhibit shall, if practicable, provide an original, a copy for each party, and 7 additional copies for the board. No reference shall be made to an exhibit, other than to mark it for identification, before the presiding officer has accepted it into evidence.~~

~~(e) Pursuant to Rab 208.08(b), at least 15 days before the first evidentiary session, all parties shall serve upon all other parties a list giving the name and address of all witnesses intended to be called during the proceeding, and a list briefly identifying all exhibits intended to be offered during the proceeding. These lists shall be updated up to 10 days prior to the hearing whenever there is a change in the contents of the list.~~

~~(f) No witness shall testify, and no exhibits shall be offered, at any session of a proceeding unless the witness or exhibit has been identified in accordance with this paragraph unless the party attempting to introduce the witness or exhibit demonstrates that the:~~

~~(1) Evidence is newly discovered;~~

~~(2) Evidence could not have been known and identified earlier; and~~

~~(3) Introduction of the testimony or exhibit will not substantially prejudice the ability of an opposing party to present the opposing party's case or rebut the testimony or evidence so offered.~~

~~(g) Should the board determine, on motion or upon their own initiative, that the subject matter of the proceeding is so complex, and that no party will be substantially prejudiced thereby, the board shall require that the direct testimony of all witnesses be prepared in writing by the party offering that direct testimony. Written testimony shall be subscribed under oath or affirmation and served upon all parties at least 15 days before the first evidentiary session of the proceeding.~~

~~(h) Any party may elect to submit written testimony without such an order and without agreement to the contrary from the other parties. However, the witness shall be available for cross examination. This election shall require no other party to either present written testimony or waive their opportunity to cross examine any witness. Written direct testimony so distributed shall be marked as an exhibit, and shall be received into evidence before the witness is cross-examined upon the contents of the exhibit.~~

~~(i) The petitioner shall first offer all evidence necessary to support his or her claim. The respondent shall then offer any evidence desired in defense of the claim. The petitioner shall then offer any evidence desired in rebuttal.~~

~~(j) The party who calls a witness shall first examine the witness. Thereupon, all other parties may cross examine the witness. The party originally calling the witness may then re-examine the witness, but only concerning matters raised upon cross examination.~~

~~(k) Oral sessions of the proceeding shall be recorded verbatim. If a tape recording is employed, a copy of the tape shall be made and kept available for public inspection. Upon the request of any person, the tape recording shall be transcribed by a certified court reporter, but the persons requesting a transcript shall bear the cost. In instances where a party requires its own audio recording of a proceeding, such recording shall not unreasonably impede the orderly conduct of the proceeding.~~

~~(l) All parties shall file opening memoranda 30 days after the conclusion of all the evidence. Such memoranda shall contain argument on the evidence, and the requested findings of fact and the conclusions of law that the party wishes the board to reach.~~

~~(m) All parties shall file reply memoranda 15 days after the filing of opening memoranda. The reply memoranda shall contain such argument as the party deems desirable on matters raised~~

~~in the opening memoranda of the opposing parties. Neither opening nor reply memoranda shall exceed 50 pages in length.~~

~~(n) Upon expiration of the time for filing reply memoranda, the record shall be closed and the board shall proceed to a decision on the subject matter of the proceeding. The board shall, however, at any time prior to decision, upon receipt of any new, material, non-redundant information and upon appropriate notice to all parties, reopen the record.~~

~~Rab 208.16 Retention of Hearing Records. The board shall keep each hearing docket file for each hearing in its records for at least 5 years following the date of the final decision or the date of the decision on any appeal, unless the director of the division of records management and archives of the department of state sets a different retention period pursuant to rules adopted under RSA 5:40.~~

~~PART Rab 209 RECONSIDERATION AND STAY~~

~~Rab 209.01 Motion for Reconsideration or Rehearing.~~

~~(a) Within 30 days after service of the final order of the board, any party may file a motion for reconsideration which shall serve as a petition for rehearing under RSA 541. No distinction shall be made between the terms "reconsideration" and "rehearing."~~

~~(b) The motion for reconsideration shall:~~

~~(1) Include any memorandum of law the petitioner wishes the board to consider;~~

~~(2) Identify each error of fact, each error of reasoning, and each erroneous conclusion of law contained in the final order which the moving party wishes reconsidered; and~~

~~(3) Concisely state the correct factual finding, correct reasoning, and correct conclusion urged by the moving party.~~

~~(c) Objections to a motion for rehearing shall be filed within 10 days after filing of the motion.~~

~~(d) Upon expiration of the time for filing of objections, the board shall grant or deny the motion, or any part thereof, on its merits, or the board shall treat the motion as one for reopening and grant it pending the receipt of such additional data or additional argument as it considers necessary.~~

~~Rab 209.02 Reconsideration on the Board's Own Motion.~~

~~(a) Within 30 days of the service date of a final order or decision, the board shall reconsider, revise, or reverse the earlier action on its own motion if the board determines that the earlier action was based on a material error of fact, material error of reasoning, or contained a materially erroneous conclusion of law. If reconsideration is based upon the existing record, no prior notice shall be given to the parties. If the board determines that further argument or~~

~~evidence should be considered, it shall issue an appropriate order providing the parties with notice and an opportunity to be heard before issuing a reconsidered decision.~~

~~Rab 209.03 Stay of Board Orders.~~

~~(a) A stay of board action shall be specifically requested and no board action shall be stayed unless the board specifically so orders. The mere filing of a motion for reconsideration shall not operate as a motion for stay or an actual stay of any board order.~~

~~(b) A motion for stay may be combined with a motion for reconsideration but a motion for stay shall not be submitted in the absence of a motion for reconsideration.~~

~~(c) A motion for stay, whether combined with a motion for reconsideration or as a separate motion, shall be filed within 30 days from the service date of the order in question.~~

~~(d) The board acting on its own motion or on a motion to stay, shall stay the effect of any board order within 30 days from the service date thereof, with or without issuing a corresponding order to reconsider or reopen the proceeding if the board determines that a stay is necessary to ensure fairness or prevent an injustice to affected parties.~~

~~(e) A motion for stay shall be granted only if a motion for reconsideration is granted pursuant to Rab 209.01(d). No motion for stay shall be granted if the underlying motion for reconsideration is denied.~~

PART Rab 204 PRESIDING OFFICER; WITHDRAWAL AND WAIVER OF RULES

Rab 204.01 Presiding Officer; Appointment; Authority

(a) All hearings shall be conducted for the board by a natural person appointed or authorized to serve as a presiding officer.

(b) A presiding officer shall as necessary:

(1) Regulate and control the course of a hearing;

(2) Facilitate an informal resolution acceptable to all parties;

(3) Administer oaths and affirmations;

(4) Receive relevant evidence at hearings and exclude irrelevant, immaterial or unduly repetitious evidence;

(5) Rule on procedural requests, including adjournments or postponements, at the request of a party or on the presiding officer's own motion;

(6) Question any witness to develop a complete record;

(7) Cause a complete record of any hearing to be made, as specified in RSA 541-A:31, VI; and

(8) Take any other action consistent with applicable statutes, rules and case law necessary to conduct the hearing and complete the record in a fair and timely manner.

Rab 204.02 Withdrawal of Presiding Officer.

(a) Upon his or her own initiative or upon the motion of any party, a presiding officer or board official shall, for good cause, withdraw from any hearing.

(b) Good cause shall exist if a presiding officer or board official:

(1) Has a direct interest in the outcome of a proceeding, including, but not limited to, a financial or family relationship;

(2) Has made statements or engaged in behavior which objectively demonstrates that he or she has prejudged the facts of a case;

(3) Personally believes that he or she cannot fairly judge the facts of a case.

(c) Mere knowledge of the issues, the parties or any witness shall not constitute good cause for withdrawal.

Rab 204.03 Waiver or Suspension of Rules by Presiding Officer. *The presiding officer, upon his or her own initiative or upon the motion of any party, shall suspend or waive any requirement or limitation imposed by this chapter upon reasonable notice to affected persons when the proposed waiver or suspension appears to be lawful, and would be more likely to promote the fair, accurate and efficient resolution of issues pending before the board than would adherence to a particular rule or procedure.*

PART Rab 205 FILING, FORMAT AND DELIVERY OF DOCUMENTS

Rab 205.01 Date of Issuance or Filing. *All documents governed by these rules shall be rebuttably presumed to have been issued on the date noted on the document and to have been filed with the board on the actual date of receipt by the board, as evidenced by a date stamp placed on the document by the board in the normal course of business.*

Rab 205.02 Format of Documents

(a) All correspondence, pleadings, motions or other documents filed under these rules shall:

(1) Include the title and docket number of the proceeding, if known;

(2) Be typewritten or clearly printed on durable paper 8 1/2 by 11 inches in size;

(3) Be signed by the party or proponent of the document, or, if the party appears by a representative, by the representative; and

(4) Include a statement certifying that a copy of the document has been delivered to all parties to the proceeding in compliance with Rab 204.03.

(b) A party or representative's signature on a document filed with the board shall constitute certification that:

(1) The signer has read the document;

(2) The signer is authorized to file it;

(3) To the best of the signer's knowledge, information and belief there are good and sufficient grounds to support it; and

(4) The document has not been filed for purposes of delay.

Rab 205.03 Delivery of Documents

(a) Copies of all petitions, motions, exhibits, memoranda, or other documents filed by any party to a proceeding governed by these rules shall be delivered by that party to all other parties to the proceeding.

(b) All notices, orders, decisions or other documents issued by the presiding officer or board shall be delivered to all parties to the proceeding.

(c) Delivery of all documents relating to a proceeding shall be made by personal delivery or by depositing a copy of the document, by first class mail, postage prepaid, in the United States mail, addressed to the last address given to the board by the party or if represented to the party's representative.

(d) When a party appears by a representative, delivery of a document to the party's representative at the address stated on the appearance filed by the representative shall constitute delivery to the party.

PART Rab 206 TIME PERIODS

Rab 206.01 Computation of Time

(a) Unless otherwise specified, all time periods referenced in this chapter shall be calendar days.

(b) Computation of any period of time referred to in these rules shall begin with the day after the action which sets the time period in motion, and shall include the last day of the period so computed.

(c) If the last day of the period so computed falls on a Saturday, Sunday or legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday or legal holiday.

PART Rab 207 MOTIONS AND PLEADINGS

Rab 207.01 Motions; Objections.

(a) Motions shall be in written form and filed with the presiding officer, unless made in response to a matter asserted for the first time at a hearing or on the basis of information which was not received in time to prepare a written motion.

(b) Oral motions and any oral objection to such motions shall be recorded in full in the record of the hearing. If the presiding officer finds that the motion requires additional information in order to be fully and fairly considered, the presiding officer shall order the moving party to submit the motion in writing, with supporting information within 5 days of the order. Objections to such motions shall be filed within 5 days of the filing of the motion.

(c) Objections to written motions shall be filed within 30 days of the date of the motion;

(d) Failure by an opposing party to object to a motion shall not in and of itself constitute grounds for granting the motion.

(e) The presiding officer shall rule upon a motion after full consideration of all objections and other factors relevant to the motion.

Rab 207.02 Pleadings.

(a) The only pleadings permitted shall be petitions, other than for rulemaking, and replies to petitions. Applications shall not be considered pleadings.

(b) All petitions shall contain:

(1) The name and address of the petitioner;

(2) The name and address of the petitioner's representative, if any;

(3) A concise statement of the facts that caused the petitioner to request the board to act;

(4) The action that the petitioner wishes the board to take; and

(5) The identification of any statutes, rules, orders, or other authority that entitles the petitioner to request the board to act.

(c) Board replies to petitions shall contain:

- (1) The name and address of the petitioner;*
 - (2) The name and address of the representative of the petitioner, if any;*
 - (3) A statement addressing each fact alleged in the petition;*
 - (4) A statement addressing the authority identified by the petitioner;*
 - (5) A concise response to each statement;*
 - (6) The identification of any statutes, rules, orders, or other authority, not identified in the petition, having a bearing upon the subject matter of the petition; and*
 - (7) The action the board took.*
- (d) Replies shall be filed within 90 days from the date of the petition.*

PART Rab 208 NOTICE OF HEARING; APPEARANCES; PRE-HEARING CONFERENCES

Rab 208.01 Commencement of Hearing. *A hearing shall be commenced by an order of the board giving notice to the parties at least 30 days prior to the hearing as required by Rab 208.03.*

Rab 208.02 Docket Numbers. *A docket number shall be assigned to each matter to be heard which shall appear on the notice of hearing and all subsequent orders or decisions of the board.*

Rab 208.03 Notice of Hearing.

(a) A notice of a hearing issued by the board at least 30 days prior to the hearing shall contain the information required by RSA 541-A:31, III, namely:

- (1) A statement of the time, place and nature of any hearing;*
- (2) A statement of the legal authority under which a hearing is to be held;*
- (3) A reference to the particular statutes and rules involved including this chapter;*
- (4) A short and plain statement of the issues presented;*
- (5) A statement that each party has the right to have an attorney represent them at their own expense; and*
- (6) A statement that each party has the right to have the board provide a licensed court reporter at the party's expense and that any such request shall be submitted in writing at least 10 days prior to the hearing.*

Rab 208.04 Appearances and Representation

(a) A party or the party's representative shall file an appearance that includes the following information:

- (1) A brief identification of the matter;*
- (2) A statement as to whether or not the representative is an attorney; and*
- (3) The party or representative's daytime address and telephone number.*

Rab 208.05 Prehearing Conference. *Any party may request, or the presiding officer shall schedule on his or her own initiative, a pre-hearing conference in accordance with RSA 541-A:31,V to consider:*

- (a) Offers of settlement;*
- (b) Simplification of the issues;*
- (c) Stipulations or admissions as to issues of fact or proof by consent of the parties;*
- (d) Limitations on the number of witnesses;*
- (e) Changes to standard procedures desired during the hearing by consent of the parties;*
- (f) Consolidation of examination of witnesses; and*
- (g) Any other matters which aid in the disposition of the proceeding.*

PART Rab 209 ROLES OF BOARD STAFF AND COMPLAINANTS

Rab 209.01 Role of Board Staff in Enforcement or Disciplinary Hearings. *Unless called as witnesses, board staff shall have no role in any enforcement or disciplinary hearing.*

Rab 209.02 Role of Complainants in Enforcement or Disciplinary Hearings. *Unless called as a witness or granted party or intervenor status, a person who initiates an adjudicative proceeding by complaining to the board about the conduct of a person who becomes a party shall have no role in any enforcement or disciplinary hearing.*

PART Rab 210 INTERVENTION

Rab 210.01 Intervention.

(a) A non-party may intervene in a matter pending before the board under the provisions of RSA 541-A:32, by filing a motion stating facts demonstrating that the non-

party's rights or other substantial interests might be affected by the proceeding or that the non-party qualifies as an intervenor under any provision of law.

(b) If the presiding officer determines that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the hearing, the presiding officer shall grant the motion for intervention.

(c) Participation by intervenors shall be limited to that which is necessary to protect the interest identified in the petition for intervention.

(d) Petitions for intervention shall be filed any time after commencement of a proceeding, and state:

(1) The petitioner's interest in the subject matter of the hearing;

(2) Whether the petitioner appears in support of the complainant, or the respondent, as well as for his or her own interest;

(3) Why the interests of the parties and the orderly and prompt conduct of the proceeding would not be impaired; and

(4) Any other reasons why the petitioner should be permitted to intervene.

(e) A person filing a complaint that becomes the subject of a disciplinary hearing shall be served with the hearing notice and notified of the right to intervene in the proceeding.

(f) Once granted leave to intervene, an intervenor shall take the proceeding as he or she finds it and no portion of the proceeding shall be repeated because of the fact of intervention.

PART Rab 211 POSTPONEMENT REQUESTS AND FAILURE TO ATTEND HEARING

Rab 211.01 Postponements.

(a) Any party to a hearing may make an oral or written motion that a hearing be postponed to a later date or time.

(b) If a postponement is requested by a party to the hearing, it shall be granted if the presiding officer determines that good cause has been demonstrated. Good cause shall include the unavailability of parties, witnesses or attorneys necessary to conduct the hearing, the likelihood that a hearing will not be necessary because the parties have reached a settlement or any other circumstances that demonstrate that a postponement would assist in resolving the case fairly.

(c) If the later date, time and place are known at the time of the hearing that is being postponed, the date, time and place shall be stated on the record. If the later date, time and place are not known at the time of the hearing that is being postponed, the presiding officer

shall issue a written scheduling order stating the date, time and place of the postponed hearing as soon as practicable.

Rab 211.02 Failure to Attend Hearing.

(a) If any party to whom notice has been given in accordance with Rab 207.03 fails to attend a hearing, the presiding officer shall declare that party to be in default unless failure to attend is justified by a showing of good cause.

(b) Good cause shall include accident, illness or other circumstances beyond the control of the licensee.

(c) In the absence of good cause for failure to attend the hearing, the presiding officer shall:

(1) Dismiss the case, if the party with the burden of proof fails to appear;

(2) Hear the testimony and receive the evidence offered by a party, if that party has the burden of proof in the case; or

(3) Grant a postponement of the hearing under the provisions of Rab 211.01.

PART Rab 212 REQUESTS FOR INFORMATION OR DOCUMENTS

Rab 212.01 Voluntary Production of Information.

(a) Each party shall attempt in good faith to completely and timely respond to requests for the voluntary production of information or documents relevant to the hearing.

(b) When a dispute between parties arises concerning a request for the voluntary production of information or documents, any party may file a motion to compel the production of the requested information under Rab 212.02.

Rab 212.02 Motions to Compel Production of Information

(a) Any party may make a motion requesting that the presiding officer order the parties to comply with information requests. The motion shall be filed at least 15 days before the date scheduled for the hearing, or as soon as possible after receiving the notice of hearing.

(b) The moving party's motion shall:

(1) Set forth in detail those factors which it believes justify its request for information; and

(2) List with specificity the information it is seeking to discover.

(c) When a party has demonstrated that such requests for information are necessary for a full and fair presentation of the evidence at the hearing, the presiding officer shall grant the motion.

Rab 212.03 Mandatory Pre-Hearing Disclosure of Witnesses and Exhibits At least 5 days before the hearing the parties shall exchange a list of all witnesses to be called at the hearing with a brief summary of their testimony, a list of all documents or exhibits to be offered as evidence at the hearing, and a copy of each document or exhibit.

PART Rab 213 RECORD, PROOF, EVIDENCE AND DECISIONS

Rab 213.01 Record of the Hearing.

(a) The board shall record the hearing by tape recording or other method that will provide a verbatim record except for a proceeding on emergency action shall be governed by RSA 541-A:30, III.

(b) If any person requests a transcript of the taped record, the board shall cause a transcript to be prepared and, upon receipt of payment for the cost of the transcription, shall provide copies of the transcript to the requesting party.

(c) At the request of a party to any proceeding involving disciplinary action, the record of the proceeding shall be made by a licensed court reporter provided by the board at the requesting party's expense. A request for a licensed court reporter shall be filed at least 10 days prior to the hearing.

Rab 213.02 Standard and Burden of Proof The party asserting a proposition shall bear the burden of proving the truth of the proposition by a preponderance of the evidence.

Rab 213.03 Testimony; Order of Proceeding

(a) Any person offering testimony, evidence or arguments shall state for the record his or her name, and role in the proceeding. If the person is representing another person, the person being represented shall also be identified.

(b) Testimony shall be offered in the following order:

(1) The party or parties bearing the burden of proof and such witnesses as the party may call;

(2) The party or parties opposing the party who bears the overall burden of proof and such witnesses as the party may call.

Rab 213.04 Evidence

(a) Receipt of evidence shall be governed by the provisions of RSA 541-A:33.

(b) All documents, materials and objects offered as exhibits shall be admitted into evidence unless excluded by the presiding officer as irrelevant, immaterial, unduly repetitious or legally privileged.

(c) All objections to the admissibility of evidence shall be stated as early as possible in the hearing, but not later than the time when the evidence is offered.

(d) Transcripts of testimony and documents or other materials, admitted into evidence shall be public records unless the presiding officer determines that all or part of a transcript or document is exempt from disclosure under RSA 91-A:5 or applicable case law.

Rab 213.05 Proposed Findings of Fact and Conclusions of Law

(a) Any party may submit proposed findings of fact and conclusions of law to the presiding officer prior to or at the hearing.

(b) Upon request of any party, or if the presiding officer determines that proposed findings of fact and conclusions of law would serve to clarify the issues presented at the hearing, the presiding officer shall specify a date after the hearing for the submission of proposed findings of fact and conclusions of law.

(c) In any case where proposed findings of fact and conclusions of law are submitted, the decision shall include rulings on the proposals.

Rab 213.06 Closing the Record

(a) After the conclusion of the hearing, the record shall be closed and no other evidence shall be received into the record, except as allowed by (b) below and Rab 213.08.

(b) Before the conclusion of the hearing, a party may request that the record be left open to allow the filing of specified evidence not available at the hearing. If the other parties to the hearing have no objection or if the presiding officer determines that such evidence is necessary to a full consideration of the issues raised at the hearing, the presiding officer shall keep the record open for the period of time necessary for the party to file the evidence and for cross examination on such evidence.

Rab 213.07 Reopening the Record. *At any time prior to the issuance of the decision on the merits, the presiding officer, on the presiding officer's own initiative or on the motion of any party, shall reopen the record to receive relevant, material and non-duplicative testimony, evidence or arguments not previously received, if the presiding officer determines that such testimony, evidence or arguments are necessary to a full and fair consideration of the issues to be decided.*

Rab 213.08 Decisions

(a) A board member shall not participate in making a decision unless he or she personally heard the testimony in the case, unless the matter's disposition does not depend on

the credibility of any witness and the record provides a reasonable basis for evaluating the testimony.

(b) If a presiding officer has been delegated the authority to conduct a hearing in the absence of a majority of the officials of the board who are to render a final decision, the presiding officer shall submit to the board a written proposal for decision, which shall contain a statement of the reasons for the decision and findings of fact and rulings of law necessary to the proposed decision.

(c) If a proposal for decision in a matter not personally heard by the board is adverse to a party to the proceeding other than the board itself, the board shall serve a copy of the proposal for decision on each party to the proceeding and provide an opportunity to file exceptions and present briefs and oral arguments to the board.

(d) A proposal for decision shall become a final decision upon its approval by the board.

(e) The board shall keep a decision on file in its records for at least 5 years following the date of the final decision or the date of the decision on any appeal, unless the director of the division of records management and archives of the department of state sets a different retention period pursuant to rules adopted under RSA 5:40.

PART Rab 214 MOTION FOR REHEARING

Rab 214.01 Purpose The rules in this part are intended to supplement any statutory provisions, including RSA 541, that require or allow a person to request a rehearing of a decision of the board prior to appealing the decision.

Rab 214.02 Applicability. The rules in this part shall apply whenever any person has a right under applicable law to request a rehearing of a decision prior to filing an appeal of the decision with the court having appellate jurisdiction.

Rab 214.03 Filing and Content of Motion

(a) The motion for rehearing shall be filed within 30 days of the date of the board decision or order.

(b) A motion for rehearing shall:

(1) Identify each error of fact, error of reasoning, or error of law which the moving party wishes to have reconsidered;

(2) Describe how each error causes the board's decision to be unlawful, unjust or unreasonable, or illegal in respect to jurisdiction, authority or observance of the law, an abuse of discretion, arbitrary, or capricious.

(3) State concisely the factual findings, reasoning or legal conclusion proposed by the moving party; and

(4) Include any argument or memorandum of law the moving party wishes to file.

Rab 214.04 Standard for Granting Motion for Rehearing. A motion for rehearing in a case subject to appeal under RSA 541 shall be granted if it demonstrates that the board's decision is unlawful, unjust or unreasonable.

Rab 214.05 Decision on Motion for Rehearing. The board shall grant or deny a motion for rehearing, or suspend the order or decision pending further consideration within 10 days of the filing of the motion for rehearing.

Re-adopt Rab 210, effective 11/1/07 (document #9017) and renumber as Rab 215, and renumber existing Rab 211 and Rab 212 as Rab 216 and Rab 217, so that Rab 215 reads as follows:

PART Rab 2150 RULEMAKING

Rab 2150.01 How Adopted. A board rule, or any amendment or repeal thereof, shall be adopted by an order and pursuant to the process required by RSA 541-A. Rules may be proposed by any person through the petition process. The order adopting a rule shall contain a concise statement of the statutory authority for the rule, the reasons for its adoption, and any other data required by statute.

Rab 2150.02 Explanation after Adoption.

(a) Any person may request an explanation regarding adoption of the rules pursuant to RSA 541-A:11, VII by submitting a request to the board.

(b) The request shall be considered at the next scheduled board meeting and the board shall issue a response within 45 days after consideration.

Rab 2150.03 Petition for Rulemaking.

(a) Any person may petition the board to commence a rulemaking proceeding for the purpose of adopting, amending, or repealing a rule.

(b) The petition shall contain:

(1) The text of the proposed rule or a statement of the particular results intended by the petitioner to flow from the implementation of the proposed rule;

(2) If the petitioner proposes to amend an existing rule, the specific insertions and deletions sought;

(3) If the petitioner proposes to repeal an existing rule, an identification of the particular rule sought to be repealed;

- (4) Any data or argument the petitioner believes would be useful to the agency in deciding whether to commence a rulemaking proceeding; and
- (5) A statement specifying the reasons the petitioner believes such adoption, amendment, or repeal should be undertaken by the board.

Rab 2150.04 Disposition of Petition.

- (a) The board shall, within 30 days from receipt of the petition, by order, grant or deny a petition for rulemaking. Before issuing that order, however, the board shall request additional data or argument from the petitioner or seek such information from others if the board determines that it needs such additional data, argument, or information to be able to render a decision on the merits of the petition.
- (b) Decisions to grant or deny a petition shall be granted by the board if the board determines that the requested action falls within the board's authority, conforms to substantive provisions of statutes implemented by the board, and is consistent with policy considerations underlying the board's purpose.
- (c) If the petition is denied, the board shall state the reason therefor in the order. Petitions for rulemaking shall be evaluated by the board in conformance with RSA 541-A.